STATE OF MICHIGAN

COURT OF APPEALS

DARLENE SHELTON,

Plaintiff-Appellee,

v

ALL CLAIMS ADJUSTING, INC. and NORMAN LARKINS,

Defendants-Appellants,

and

ALVIN BAKER,

Defendant.

UNPUBLISHED
September 18, 2003

No. 240501
Wayne Circuit Court
LC No. 00-027993-CK

Before: Smolenski, P.J., and Murphy and Wilder, JJ.

PER CURIAM.

Defendants All Claims and Larkins appeal as of right from a judgment entered in plaintiff's favor following a settlement of the case. We affirm.

The settlement agreement was binding on the parties because it was placed on the record in open court, and plaintiff was entitled to rely on defense counsel's apparent authority to settle the case on behalf of his clients. MCR 2.507(H); *Nelson v Consumers Power Co*, 198 Mich App 82, 89-90; 497 NW2d 205 (1993). "An agreement to settle a lawsuit is a contract that is subject to the legal principles generally applied to contracts." *Reed v Citizens Ins Co of America*, 198 Mich App 443, 447; 499 NW2d 22 (1993).

Defendants first contend that the settlement agreement was unenforceable because it lacked mutuality of assent. "A valid contract requires mutual assent on all essential terms." *Eerdmans v Maki*, 226 Mich App 360, 364; 573 NW2d 329 (1997). "'Mutuality of assent' means no more than that there must be mutual assent on all essential terms of a contract, and that the parties' assent is manifested in some objective form." *Reed, supra* at 449. The parties' mutual assent may be expressed orally or in writing or by other acts or conduct. *Ludowici-Celadon Co v McKinley*, 307 Mich 149, 153; 11 NW2d 839 (1943). Mutuality of assent was established by plaintiff's counsel's statement of the terms of the settlement, to which his client agreed, and defense counsel's statement on the record that he had no objection to those terms.

Defendants contend that the parties did not agree on time for performance, which was an essential term. Because defendants have not briefed the merits of the claim or cited any supporting authority, it is deemed abandoned. *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999). We note that time is generally not regarded as of essence to a contract unless otherwise indicated by the parties or the circumstances, *In re Day Estate*, 70 Mich App 242, 246; 245 NW2d 582 (1976), and the law will presume a reasonable time for performance if it is not specified in a contract. *Walter Toebe & Co v Dep't of State Highways*, 144 Mich App 21, 31; 373 NW2d 233 (1985).

Defendants next contend that the court impermissibly modified the agreement of the parties by entering a judgment against them rather than dismissing the complaint as specified in the settlement agreement. We find no error where, as here, defendants' refusal to comply with the settlement agreement necessitated such relief. See *Mikonczyk v Detroit Newspapers, Inc*, 238 Mich App 347; 605 NW2d 360 (1999).

Defendants next contend that the judgment should be set aside due to manifest injustice. Again, defendants have abandoned the issue by their failure to cite any supporting authority. *Prince*, *supra* at 197. While a substantial defect in the proceedings that results in manifest injustice may be grounds for setting aside a default or default judgment, *Alken-Ziegler, Inc v Waterbury Headers Corp*, 461 Mich 219, 233-234; 600 NW2d 638 (1999), the rules applicable to relief from settlement agreements are different, see, e.g., MCR 2.612(C)(1); *Plamondon v Plamondon*, 230 Mich App 54, 56; 583 NW2d 245 (1998); *Howard v Howard*, 134 Mich App 391, 394-396; 352 NW2d 280 (1984), and defendants have not shown that they are entitled to relief under those rules.

Affirmed.

/s/ Michael R. Smolenski
/s/ William B. Murphy
/s/ Kurtis T. Wilder